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Attorneys for Respondents
HTH Corporation, Pacific Beach Corporation, and
Koa Management, LLC

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

REGION 20, SUBREGION 37

HTH CORPORATION, PACIFIC BEACH
CORPORATION, and KOA MANAGEMENT,
LLC, a SINGLE EMPLOYER, dba PACIFIC
BEACH HOTEL,

Respondents,

and

HTH CORPORATION dba PACIFIC BEACH
HOTEL,

and

KOA MANAGEMENT, LLC dba PACIFIC
BEACH HOTEL,

and

PACIFIC BEACH CORPORATION dba
PACIFIC BEACH HOTEL,

CASE NOS.: 37-CA-7311
37-CA-7334
37-CA-7422
37-CA-7448
37-CA-7458
37-CA-7476
37-CA-7478
37-CA-7482
37-CA-7484
37-CA-7488
37-CA-7537
37-CA-7550
37-CA-7587

CASE NO.: 37-CA-7470

CASE NO.: 37-CA-7472

and

INTERNATIONAL LONGSHORE AND
WAREHOUSE UNION, LOCAL 142,

Union.

CASE NO.: 37-CA-7473

**RESPONDENTS' ANSWERING
BRIEF TO INTERNATIONAL
LONGSHORE AND WAREHOUSE
UNION, LOCAL 142'S CROSS-
EXCEPTION TO THE
ADMINISTRATIVE LAW JUDGE'S
DECISION; CERTIFICATE OF
SERVICE**

Hearing:

Judge: James Kennedy

Date: November 4-12, 2008

February 19-27, 2009

Time: 9:00 a.m

**RESPONDENTS' ANSWERING BRIEF
TO INTERNATIONAL LONGSHORE AND WAREHOUSE UNION, LOCAL 142'S
CROSS-EXCEPTION TO THE ADMINISTRATIVE LAW JUDGE'S DECISION**

In its cross-exception to the Administrative Law Judge's ("ALJ") Decision, the International Longshore and Warehouse Union, Local 142 ("Union") argued that the ALJ failed to include a remedy for employees who previously worked at the Hotel restaurant called Shogun, but lost their jobs when Shogun ceased operations. In its supporting brief, the Union specifically stated that the ALJ should have issued an order reinstating individuals numbered 23-32 on Respondents' Exhibit 18 (the Shogun employees).¹ *See Union's Brief in Support of Cross-Exceptions at page 7.* The Union's cross-exception should be denied for the following reason.

Near the conclusion of the hearing in this matter, the Counsel for the General Counsel specifically stated that it was not seeking any remedies for the former Shogun employees in this case. Specifically, the Counsel for the General Counsel clearly stated, "we did not allege that the

¹ The Union's brief actually listed individuals numbered 23-33. The individual listed as number 33, however, was a steward and not a former Shogun employee. *See Transcript of Proceedings at page 2324, lines 6-12 (hereinafter "Tr. at page:lines.")*.

Shogun employees were entitled to remedy.” *See Tr. at 2324:3-5*. In clarifying this statement, the Counsel for the General Counsel specified that “individuals numbered 23 through 32 on [Respondents Exhibit 18] were not entitled to remedy.” *Tr. at 2324:14-15*.

When explaining that certain individuals were not entitled to remedy, the Counsel for the General Counsel referred to the exact same set of individuals the Union is now claiming is entitled to remedy, right down to the exact same set of numbered individuals found on Respondents Exhibit 18. Clearly, the Counsel for the General Counsel waived any claims or remedies for the former Shogun employees. Therefore, it was not erroneous for the ALJ to decline to order any remedies for the former Shogun employees.

The Union’s untimely attempt to amend an already amended complaint filed by Counsel for the General Counsel who already admitted no remedy alleged and sought for the numerically listed Shogun employees must be rejected. The Amended Complaint is not one which the Union can seek to amend.

The Union may attempt to make the argument that – despite representations by the Counsel for the General Counsel that the former Shogun employees are not entitled to remedy – the Shogun employees should nevertheless be entitled to remedy because their matter is closely connected and has been fully litigated. In the event the Union attempts to make such an argument, Respondents wish to take this opportunity to state that such an argument would be wholly erroneous.

First, the matter regarding the Shogun employees is not closely connected to any of the other matters that were litigated in these proceedings. Second, and more importantly, the issue regarding the Shogun employees were not “fully litigated.” Clearly, as even the Counsel for the General Counsel acknowledged, the Shogun employees were not entitled to remedy. Therefore,

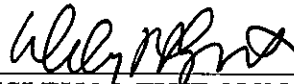
the Counsel for the General Counsel did not present any evidence or arguments for why the Shogun employees should be entitled to remedy.

Correspondingly, Respondents never addressed the issue either, due to representations by the Counsel for the General Counsel that the Shogun employees were not entitled to remedy. Therefore, as neither the Counsel for the General Counsel nor Respondents addressed whether the Shogun employees are entitled to remedy during the proceedings in this matter, the matter clearly has not been litigated. Therefore, such an argument by the Union – if made – should be rejected.

Accordingly, the Union's cross-exception should be denied.

DATED: Honolulu, Hawaii, December 23, 2009.

IMANAKA KUDO & FUJIMOTO



WESLEY M. FUJIMOTO

RYAN E. SANADA

Attorneys for Respondents

HTH Corporation, Pacific Beach Corporation and
Koa Management, LLC, a Single Employer, dba
Pacific Beach Hotel

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CERTIFICATE OF SERVICE

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I hereby certify that on December 23, 2009, the foregoing RESPONDENTS'
ANSWERING BRIEF TO INTERNATIONAL LONGSHORE AND WAREHOUSE UNION,

LOCAL 142'S CROSS-EXCEPTION TO THE ADMINISTRATIVE LAW JUDGE'S
DECISION; CERTIFICATE OF SERVICE was electronically filed with OFFICE OF
EXECUTIVE SECRETARY in Washington, D.C., and a copy of the same was hand delivered
to:

Dale Yashiki, Counsel for the General Counsel
Trent Kakuda, Counsel for the General Counsel
National Labor Relations Board; SubRegion 37
300 Ala Moana Blvd., Room 7-245
P. O. Box 50208
Honolulu, Hawaii 96850

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DATED: Honolulu, Hawaii, December 23, 2009.

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